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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 CR 436 (KMW)

5 JAMES DAVID WILLIAMS, STEVEN
6 BROWN and GERALD SEPPALA,

7 Defendants.
8 -----x

9 New York, N.Y.
10 November 22, 2016
11 10:00 a.m.

12 Before:

13 HON. KIMBA M. WOOD,

14 District Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
18 Southern District of New York

19 PATRICK EGAN

20 Assistant United States Attorney

21 ANTHONY CECUTTI

22 Attorney for Defendant Williams

23 DOAR, RIECK, KALEY & MACK

24 Attorneys for Defendant Brown

25 WALTER MACK, JR.

MICHAEL MINNEFOR

FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant Seppala

VINCENT SOUTHERLAND

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1 (In open court, case called, defendants not present)

2 MR. EGAN: Patrick Egan for the government. Good
3 morning, your Honor.

4 THE COURT: Good morning.

5 MR. CECUTTI: Good morning, your Honor, Anthony
6 Cecutti for James David Williams. Your Honor may recall that
7 all defendants were excused by your Honor at the last
8 conference.

9 THE COURT: Yes, thank you, and they waived their
10 presence here.

11 MR. CECUTTI: Yes, your Honor.

12 MR. MACK: Walter Mack for Defendant Steven J. Brown.
13 Good morning, your Honor.

14 THE COURT: Good morning.

15 MR. SOUTHERLAND: Good morning, your Honor, Federal
16 Defenders by Vincent Southerland on behalf of Mr. Seppala.

17 THE COURT: Good morning.

18 MR. MACK: If I may introduce someone who is trying to
19 bring me into the modern age, Michael Minnefor, who will be
20 working with me on this matter henceforth.

21 THE COURT: Very good.

22 MR. MINNEFOR: Good morning, your Honor.

23 THE COURT: Let's see, Mr. Egan, can you bring me up
24 to date?

25 MR. EGAN: Absolutely, your Honor. The government

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1 filed two letters with the Court sort of detailing the
2 discovery where we were.

3 THE COURT: I have those in mind.

4 MR. EGAN: So just briefly, we have turned over to
5 each defendant what amounted to about 80 gigabytes of data on
6 hard drives they provided. Two defendants had material
7 electronic evidence seized from them. They provided hard
8 drives. Those have been sent to FBI. Those, as I indicated,
9 turned out to be quite voluminous; two terabytes in the case of
10 one defendant and about 500 gigabytes in the case of another
11 defendant.

12 There is additional individual discovery which I
13 anticipate turning over today, and the only other
14 outstanding -- well, there are two. The only other outstanding
15 items are, one, there were email pen registers up on these
16 accounts, which is metadata that went back and forth to each of
17 these accounts.

18 That material had to be gathered at I guess Quantico
19 where they pull it all together. I got that shortly after I
20 gave them their thumb drives, so I'm assembling that
21 information. We have it now, and we just have to get it
22 uploaded.

23 And the final piece was actual physical documents that
24 were seized at some of the residences. Counsel for
25 Mr. Williams and Mr. Seppala have now signed stipulations

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1 saying they won't object on the basis of chain of custody if
2 the FBI now sends that out for copying, and then I think
3 discovery will be complete.

4 I have got stipulations from one of those defendants.
5 I understand the other is going to give them today. So I think
6 everything is in place to have everything turned over.

7 THE COURT: All right. What is the reasonable time
8 for the next conference when I would like to know whether
9 anyone wishes to file a motion.

10 MR. CECUTTI: Your Honor, perhaps I can answer that
11 question.

12 As your Honor just heard, and was aware by way of the
13 letter from the government, we just received the discovery.
14 And I understand that the government had some technical
15 challenges in order to produce that discovery, however, we're
16 just receiving it now.

17 And the government just represented that there's going
18 to be additional discovery that is to come. I am in the two
19 terabytes camp, so I maybe I'm the lucky winner perhaps, but
20 there's a lot of discovery here, that's undisputed, and I do
21 think that a lengthier conference date is necessary.

22 In addition, I have a two-month trial starting before
23 Judge Caproni on January 18. Again, no fault to Mr. Egan, but
24 had we received the discovery a month, two months, three months
25 ago, this wouldn't become an issue for me specifically, but it

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1 is an issue where I have to devote probably the entire month of
2 December preparing for this two-month long trial. I would love
3 to be able to say to your Honor at the time of the next
4 conference: Judge, here are the motions we're going file, I'm
5 up to speed, but I think don't think I could say that.

6 So I ask that the Court adjourn for another conference
7 in about four months time, which would bring us to --

8 THE COURT: Feel free to confer with one another and
9 with the government on timing.

10 (Pause)

11 MR. CECUTTI: Your Honor, we're proposing a mid-April
12 date for another conference.

13 THE COURT: April is a month when I'll be on trial
14 every day, and on Part I the week of April 10. So we would
15 need to meet at 5 o'clock.

16 MR. CECUTTI: That's fine, your Honor.

17 THE COURT: What day would you like? I am free at
18 5 o'clock every day.

19 MR. CECUTTI: Your Honor, is the Part I week better
20 for you.

21 THE COURT: No, that's the worst week. I'll be on
22 trial and the emergency judge.

23 MR. CECUTTI: How about April 17 at 5:00 p.m.

24 THE COURT: That's fine.

25 Now my unavailability cannot be any part of the

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1 reasoning for an exclusion of time, so if you want to meet
2 sooner, I can meet with you the 11th. If you don't want to
3 meet the 11th, then I need to hear that you need that extra
4 time until the 17th. Do you follow me?

5 MR. SOUTHERLAND: Yes.

6 MR. CECUTTI: Your Honor, April 11 is fine.

7 THE COURT: Okay, good. Then let's say April 11 at
8 5:00 p.m. will be our next conference.

9 Is there any objection to an exclusion of time?

10 MR. CECUTTI: No, your Honor.

11 THE COURT: In light of the fact -- Mr. Mack?

12 MR. MACK: No, I did want to have some comment about
13 the discovery and the very little time, but there's no
14 objection to the exclusion.

15 THE COURT: I usually give my Speedy Trial Act ruling
16 right away so I don't forget to do it.

17 MR. MACK: Fine.

18 THE COURT: In light of the fact that defense counsel
19 need until April 11, 2017 to prepare for trial, I find that an
20 exclusion of time from today through April 11 is in the
21 interest of justice, and those interests outweigh the interests
22 of the defendants and the public in a speedy trial. I thus
23 exclude that time.

24 Please go ahead, Mr. Mack.

25 MR. MACK: Your Honor, I just wanted to say -- no

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1 criticism of the government is intended here, but we did
2 receive this -- I actually picked it up on a Saturday morning I
3 think week or so ago, maybe ten days ago, and Michael and I
4 have been laboring hard to decipher it. And the government, to
5 their credit, has offered some expertise, but we are still
6 having difficulty in access.

7 So I just make a point, even with more to come, we
8 still haven't been able to master the material given us to
9 date. When I say "master," I mean master its availability so
10 we can read it, of course.

11 THE COURT: I hear you. I don't know whether
12 Mr. Minnefor would be the one to answer this question or
13 Mr. Egan, but what makes it so difficult to access?

14 MR. MACK: I know Mr. Minnefor can answer that
15 question because he has been working on it diligently for ten
16 days.

17 THE COURT: Mr. Minnefor.

18 MR. MINNEFOR: A good portion of the files, I believe
19 it's called a PST file, it had to be viewed through Outlook.
20 It's not a simple of matter of just opening it up on the hard
21 drive, clicking on it and you can see an email, we had to
22 figure out how to import it into our Outlook program, which
23 allowed us to view a substantial portion of them.

24 What I am told now by some of my team, the staff that
25 is working on this, is some other emails -- there's a program

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1 that we need to install on the computers to view another big
2 chunk of emails. The government produced that program which
3 allows to you upload the software, and it also comes with
4 instructions. We followed all the instructions and it's not
5 uploading onto our computer. So we're still having some
6 technical difficulties in that regard.

7 THE COURT: Mr. Egan.

8 MR. EGAN: Your Honor, they are produced in two --
9 some are on PST files, some were in a different format. We
10 produced them with this program Thunderbird, because it was my
11 understanding that that didn't involve a conversion and it
12 would allow us to get it out sooner, which obviously, since we
13 were running behind, was important.

14 Mr. Mack contacted me and let me know that there were
15 problems. The same day I gave him the number of someone in our
16 office to facilitate that. He remains available to help him.
17 If any other defense counsel are having problems, please let me
18 know and I will put them in touch with the same person to walk
19 them through whatever problems they're having.

20 THE COURT: Have you taken advantage of that?

21 MR. MINNEFOR: The person he's referring to -- his
22 first his name is Michael, his last name escapes me -- assisted
23 us with that first portion about importing those PST files into
24 our Outlook program. I have a call and email in to him to
25 assist us with the Thunderbird program. Hopefully he will get

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1 back to us soon and we can move on to the next step.

2 THE COURT: Thank you for that explanation.

3 Mr. Mack.

4 MR. MACK: One other factor, it's also clear from the
5 limited review that has been done in the time period for what I
6 can access that there is a continuing investigation underway,
7 because some of the emails and things, at least of my client,
8 are dated as recently as October of this year. So clearly that
9 may raise issues. I certainly can't speak to that, but it is
10 clear that the investigation is continuing.

11 I'm not sure how they obtained those emails, but it's
12 clear that work is being done probably by the grand jury, but
13 I'm not really sure, maybe by order or what have you. But it
14 is a factor of consequence to us that our email -- our clients
15 are communicating, Lord knows -- I mean I know my client is a
16 voluble emailer, and his emails are showing up on his personal
17 accounts now as part of the government's discovery.

18 So I would like to know when that will end, and we may
19 have a motion as to that eventually, but it is an ongoing fact
20 that I'm sure concerns all defense counsel.

21 THE COURT: I'll be ready to rule when you make your
22 motion.

23 Is there anything else?

24 MR. EGAN: Not from the government.

25 MR. SOUTHERLAND: No, your Honor.

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1 MR. CECUTTI: One minor issue, your Honor, if
2 Mr. Williams -- and I will speak for the other lawyers as
3 well -- if their clients could be excused at the next
4 conference, that would be appreciated.

5 THE COURT: That's fine with me. We may set a trial
6 date then.

7 MR. CECUTTI: That's fine.

8 THE COURT: Have we already set a trial date?

9 MR. CECUTTI: No.

10 THE COURT: Yes.

11 MR. CECUTTI: Thank you.

12 THE COURT: Do you wish to be heard?

13 MR. SOUTHERLAND: No, I think Mr. Cecutti covered it
14 for me.

15 THE COURT: Good. I have been approving international
16 travel for Mr. Mack's client, Steven Brown. The government has
17 objected. I have not asked in detail what their objection is,
18 but I think given all these delays I will probably continue to
19 get the requests, and I would like to give Mr. Egan a chance to
20 explain the objection.

21 MR. EGAN: The objection -- I have explained it to
22 Mr. Mack and we explained it in mag court, international travel
23 with someone who has a spouse who is a foreign citizen has
24 continued to raise concerns. I have made clear to Mr. Mack --
25 and the reason we have not been separately writing, we had that

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1 initial concern when there was the travel about the reason for
2 it, Mr. Mack has started supplementing the request with more
3 detail.

4 The government concedes, as he put in his letter, that
5 his compliance has been good and he has returned from each of
6 these trips. The response to Mr. Mack has been that it only
7 takes one of these trips for him not to return from, and so the
8 government simply noted its objection. But that's what it is,
9 that it is simply this is a defendant who has -- or at least
10 appears to the government to have some means, he has a wife who
11 is a foreign citizen and going to the countries where she is a
12 citizen on occasion, that's the basis of the government's
13 objection.

14 THE COURT: She's a French citizen?

15 MR. EGAN: That was my understanding at the initial
16 appearance.

17 MR. MACK: I think she's a joint citizen, actually.
18 Her mom is French. And I can't think of anything worse for my
19 client to do than fail to to meet all the conditions that
20 Mr. Carter is setting for him. In fact, Mr. Carter has
21 complained to me -- he's the pretrial services in California --
22 that my client is too detailed in his itineraries and where he
23 is going to be and how he could be reached. So I can't think
24 of anything worse that Mr. Brown can do than to fail to meet
25 the conditions set by Officer carter.

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1 THE COURT: Well, if probation is satisfied with the
2 information he gives, I will probably continue to approve the
3 trips, but if, Mr. Egan, you have any additional concerns as
4 time goes on, I will hear you.

5 MR. EGAN: I will absolutely let the Court know.

6 THE COURT: If there's nothing else, I will see you in
7 April.

8 MR. EGAN: Thank you, your Honor.

9 MR. SOUTHERLAND: Thank you, your Honor.

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